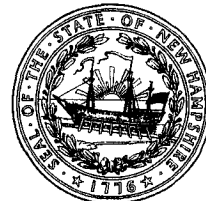




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

June 23, 2005

SAU 65  
Attn: Peter Chamberlin  
190 Main Street  
New London, NH 03257

Re: Docket No. AF 05-002 thru AF 05-005 Motion to Accept Settlement Agreement

Dear Mr. Chamberlin:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Director of the Waste Management Division, and accepted by Commissioner Michael P. Nolin on June 201 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely  
**COPY**  
Michael P. Sclafani,  
Legal Assistant

cc: Anthony P. Giunta, PG., Director, Waste Management Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
DES Public Information Officer  
Lynn Woodard, DES WMD  
Thomas Beaulieu, DES WMD  
Susan Hanamoto, DES WMD

SAU 65  
Attn: Peter Chamberlin  
190 Main Street  
New London, NH 03257

Re: Simonds Elementary School, Church Street,  
Warner, NH - UST ID#0-112211

Bradford Elementary School, Main Street,  
Bradford, NH - UST ID#0-111726

Kearsarge Regional Elementary School  
4 Cougar Court, New London, NH  
UST ID#0-115621

Kearsarge Regional Middle School  
114 Cougar Court, New London, NH  
UST ID#0-113211

**ADMINISTRATIVE FINES**  
**No. AF 05-002 thru 05-005**

**MOTION TO ACCEPT SETTLEMENT AGREEMENT**

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and SAU 65, parties to the above-captioned matters, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. SAU 65 is the registered facility owner of one underground storage tank ("UST") at the Simonds Elementary School facility, further identified as UST # 0-112211, located on real property at Church Street, Warner, NH.
3. On January 26, 2005, the Division issued Notice of Proposed Administrative Fine No. AF 05-002 to SAU 65 seeking fines totaling \$1,000 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
4. The Notice of Proposed Administrative Fine No. AF 05-002 cited SAU 65 for violating Env-Wm 1401.31(a) by failing to maintain leak monitoring equipment in good working order at all times to continuously perform their original design function for the piping for the 8,000-gallon #2 fuel oil UST and by failing to perform the annual test for proper operation. Pursuant to Env-C 607.05(d) the Division sought a fine of \$1,000 for violations noted at the Simonds Elementary School UST facility.

5. SAU 65 is the registered facility owner of one underground storage tank at the Bradford Elementary School facility, further identified as UST # 0-111726, located on real property at Main Street in Bradford, NH.
6. On January 26, 2005, the Division issued Notice of Proposed Administrative Fine No. AF 05-003 to SAU 65 seeking fines totaling \$500 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
7. The Notice of Proposed Administrative Fine No. AF 05-003 cited SAU 65 for violating Env-Wm 1401.11(a) by failing to maintain accurate stock inventory records for the 5,000-gallon #2 fuel oil UST in accordance with RSA 146-C:5 and Env-Wm 1401.11. Pursuant to Env-C 607.05(a) the Division sought a fine of \$500 for violations noted at the Bradford Elementary School facility.
8. SAU 65 is the registered facility owner of one underground storage tank at the Kearsarge Regional Elementary School facility, further identified as UST # 0-115621, located on real property at 4 Cougar Court, New London, NH.
9. On January 26, 2005, the Division issued Notice of Proposed Administrative Fine No. AF 05-004 to SAU 65 seeking fines totaling \$1,700 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
10. The Notice of Proposed Administrative Fine No. AF 05-004 cited SAU 65 for violating Env-Wm 1401.11(a) by failing to maintain accurate stock inventory records for the 10,000-gallon #2 fuel oil UST in accordance with RSA 146-C:5 and Env-Wm 1401.11. Pursuant to Env-C 607.05(a) the Division sought a fine of \$500 per requirement not met at the Kearsarge Regional Elementary School facility.
11. The Notice further cited SAU 65 for violating Env-Wm 1401.31(a) by failing to conduct the annual test for proper operation. Pursuant to Env-C 607.05(d) the Division sought a fine of \$1,000 per requirement not met at the Kearsarge Regional Elementary School facility.
12. The Notice of Proposed Administrative Fine No. AF 05-004 further cited SAU 65 for violating Env-Wm 1401.32(c) by failing to test the cathodic protection system for the 10,000-gallon #2 fuel oil UST within three years of the last test. Pursuant to Env-C 607.04(b) the Division sought a fine of \$200.
13. The Notice of Proposed Administrative Fine No. AF 05-004 sought a total of \$1,700 in proposed fines for violations noted at the Kearsarge Regional Elementary School facility.
14. SAU 65 is the registered facility owner of one underground storage tank at the Kearsarge Regional Middle School facility, further identified as UST # 0-113211, located on real property at 114 Cougar Court, New London, NH.
15. On January 26, 2005, the Division issued Notice of Proposed Administrative Fine No. AF 05-005 to SAU 65 seeking fines totaling \$200 for violations of New Hampshire Administrative Rule

Part Env-Wm 1401.

16. The Notice of Proposed Administrative Fine No. AF 05-005 cited SAU 65 for violating Env-Wm 1401.32(c) by failing to test the cathodic protection system for the 10,000-gallon #2 fuel oil UST within three years of the last test. Pursuant to Env-C 607.04(b) the Division sought a fine of \$200 for violations noted at the Kearsarge Regional Middle School facility.

17. In order to settle these matters, the Division and SAU 65 have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

18. Of the proposed total fines, in the amount of \$3,400, 20% or \$680 shall be suspended due to this being first-time unintentional violations. An additional 20% or \$680 shall be suspended due to SAU 65's good faith effort to return these facilities to compliance. An additional 20% or \$680 shall be suspended based on the prior history of compliance at these facilities.

19. The suspended portion of the proposed fines, in the amount of \$2,040 are contingent upon SAU 65 maintaining all its UST facilities in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this Agreement. If SAU 65 fails to maintain compliance during the two-year period, the suspended portion of the fines, in the amount of \$2,040 shall become due and payable immediately. If SAU 65 maintains compliance for the prescribed two-year period on all its UST facilities, the suspended portion of the fines shall be waived.

20. SAU 65 agrees to pay the remaining \$1,360 upon execution of this Agreement by SAU 65.

21. Payment under Paragraph # 20 and any payment that becomes due pursuant to Paragraph #19 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit  
Attention: Michael Sclafani, Legal Assistant  
P.O. Box 95, Concord, NH 03302-0095

22. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

23. By executing this Agreement, SAU 65 waives its right to a hearing on or any appeal of the administrative fines identified in the referenced Notices, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

24. The effective date of this Agreement will be the date on which it is signed by an authorized representative of SAU 65, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become

effective on the date on which it has been accepted by the Commissioner.

25. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

SAUC

**COPY**

Peter Chamberlin  
Duly Authorized

6.6.05  
Date

DES Waste Management Division

**COPY**

Anthony P. Giunta, P.G., Director

6/20/05  
Date

This Motion to Accept Settlement agreement is granted this 21<sup>st</sup> day of June, 2005.

**COPY**

Michael P. Nolin, Commissioner  
Department of Environmental Services